IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B. CIVIL WRIT PETITION No.3764/2003
Smt.LAXMI SHAKHTAWAT V/S Dy. SECRETARY & Ors.

DATE OF ORDER ::: 5th APRIL,2007

PRESENT

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri R.P. Vijay for the petitioner.
Shri H.V. Nandwana, Deputy Government
Advocate for State.

The petitioner Smt. Laxmi Shakhtawat has in this writ petition challenged the order dated 20.6.1996 whereby her application for renewal of the mining lease was refused and the security amount was ordered to be forfeited and further order dated 28.3.1997 whereby her appeal was rejected by the Additional Director (Mines), Jaipur and the order dated 10.2.2003 whereby her revision

petition thereagainst was also rejected.

Factual matrix of the case is that the petitioner was granted a marble lease No.638/88 near Gram Goverhanpura, Tehsil Rajgarh, District Alwar by Mining Engineer, Alwar over an area of 100 x 100 sq.mtrs. for a period of 10 years with effect from 19.4.1989. Dead rent of Rs.6500/- p.a. was fixed. The petitioner started mining activities in the area by investing a huge amount for exploring the marble. Initial production was started and continued for two years after spending huge amount in developing the mining. Hon'ble Supreme Court vide its order dated 8.4.1993 in the Public Interest Litigation filed by Tarun Bharat Sangh, Alwar directed that the mining activities in the mines situated outside the forest area but within tiger reserve may continue for a period of four months only

and beyond which it should be allowed to continue only if the Central Government permits them to do so in accordance with the provisions of the Forest Conservative Act, 1980. Mining activities were stopped by the Government vide order dated 8.4.93 due to which the petitioner was put to heavy financial loss. She had invested huge money in development the site. The Mining Engineer, Alwar vide notice dated 24.1.1994 demanded from the petitioner dead rent for the period 19.7.93 to 18.1.1994 and also the amount of excess royalty. This notice was however never served upon the petitioner. The Mining Engineer vide order dated 20.6.96 cancelled the mining lease on account of non-compliance of notice dated 24.1.1994. Then her appeal and revision petition thereagainst also rejected by the concerning authorities. According to the petitioner,

she came to know in the month of October 1996 that the Government itself has issued a list of 154 mines permitting them to re-start the mining in which the name of the petitioner was included at S.No.59. The petitioner immediately approached the office of the Mining Engineer, Alwar. She deposited entire amount of dead rent vide challan dated 29.11.1996 and then requested for renewal of permission to start the mining but she was not allowed to do so.

I have heard Shri R.P.Vijaya, learned counsel for the petitioner and Shri H.V.Nandwana, learned Deputy Government Advocate for the State and perused the material on record.

Shri R.P. Vijay, learned counsel for the petitioner argued that the action of the respondents in cancelling the mining lease of the petitioner was to harsh and

unreasonable. She had invested huge amount in developing the mine by removing the waste material. He argued that cancellation of mining lease was wholly arbitrary and illegal. She like other most of the mine holders had to stop the mining due to stay order passed by the Hon'ble Supreme Court on 8.4.96. It was during that period when the mining lease was cancelled and the petitioner could not take timely steps because there was no hope for mining activities being re-started. Later permission granted by the Hon'ble Supreme Court to the Government under which some of the mining area was excluded from the tiger reserve which enabled the mining activities to re-start. Demand raised by the respondent with regard to the payment of rent pertain to the period when the mining activities remained stopped and therefore

cancellation of mining lease on that basis alone is illegal and unfounded besides being arbitrary. He argued that the application of the petitioner for extension of the period of lease was arbitrarily rejected which according to the rule 16(2) of the MMC Rules 1986 was extendable to 20 years. Appeal of the petitioner was rejected on the ground of delay by holding that the petitioner was served a notice of cancellation of mining lease on 21.7.94 and appeal has been filed after enormous delay. It has therefore been prayed that the writ petition be allowed and all the three impugned orders be declared illegal and arbitrary.

Per contra, Shri H.V. Nandwana, learned counsel for State argued that the mining areas leased out to the petitioner fell in the tiger reserve, therefore mining in that area had to be stopped with effect from

1.11.1993 in compliance of the order passed by the Hon'ble Supreme Court on 18.6.93. Subsequently, their lordships of the Hon'ble Supreme Court allowed the boundaries of the tiger reserve to be changed to the extent of 868 Km on the basis of recommendation of High Power Committee. 144 mines including that of the petitioner were thus taken out of the tiger reserve as also the forest. A notice was given to the petitioner on 24.1.1994 to remove the deficiency within 15 days in which she was required to make payment of dead rent to the tune of Rs.3250/- for the period from 19.7.93 to 18.1.94 and excess royalty amount to the tune of Rs.8225/- for the period 1991-92, thus a total of Rs.11475/-. Notice was duly served upon the petitioner. However even after expiry of the period, she failed to remove the deficiencies. The respondents

vide letter dated 21.7.94 while forfeiting the security amount of the mining lease, forwarded her case to the Superintending Engineer (Mines), Bharatpur for approval of cancellation of the mining lease. The Superintending Engineer (Mines) Bharatpur also vide letter dated 29.10.1994 required the petitioner to remove the deficiencies conveyed to her vide notice dated 24.1.94 but she failed to respond while his order dated 26.6.96 forwarded for cancellation the mining lease of the petitioner. The respondents then took possession of the mining areas on 30.7.96. It would thus be clear that the petitioner failed to comply with the requirement of notice and make payment of the dead rent and excess royalty amount. Her appeal was not filed within the prescribed period of limitation as provided for by rule 43(1) of the MMC Rules within

three months which was filed after more than five months. The appeal was therefore rightly rejected as time barred.

The order rejecting her revision petition by the Government was also perfectly legal and justified. Shri Nandwana therefore prayed that the writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the material on record.

There is no dispute between the parties at least on one fact that in the mine of the petitioner had to be closed under order of the Hon'ble Supreme Court. Similar mines were also closed down. All 144 mines were then allowed to re-function when the boundaries of the tiger reserve was changed taking them out of reserve forest. Non-payment of dead rent to the tune of

Rs.3250/- and excess royalty to the tune of Rs.8225/- and thus a total sum of Rs.11,475/- was basically the cause for cancellation of the petitioner's mining lease. The amount of excess royalty and dead rent clearly thus correspondence to the period when the interim order of the Hon'ble Supreme Court was operating. It may be true that the petitioner when he was required by notice dated 24.1.94 to make these deficiencies good did not promptly respond but that according to the petitioner was because she took the mining operations to have been closed for over on account of the interim order passed by the Hon'ble Supreme Court in PIL initiated by Tarun Bharat Sangh, Alwar. In all, 144 mines were covered by the described area and all others except the petitioner have allowed to re-start the mining activities.

The order passed by the Additional Director (Mines) in entertaining to the petition on merits and yet rejecting the same as time barred cannot be appreciated in law. Even if the appeal which was required to be filed within three months was filed after more than five months with a delay of more than two months and few days, that did show the intention of the petitioner to remove all the deficiencies and re-start the mining like all others in that area. Although the appellate authority rejected the appeal as time barred but it failed to appreciate that the deficiencies pointed out by the mining engineer were not so grave as would permanently annihilate the claim of the petitioner for revival of the permission to mine. These deficiencies were not such which could not be allowed to be removed after delay of few months which in the

present case was five months and few days. Moreover the period for which the deficiencies pertained was the period when the interim order passed by the Supreme Court was operating. In this view of the matter, I find that the Mining Engineer as also the Revisional Authority have both failed to correctly address themselves to these vital aspect of the matter.

In the result, the writ petition is allowed and the orders dated 20.6.96, 28.3.97 and 10.2.2003 are quashed and set aside and the matter is remanded back to the Mining Engineer, Alwar for reconsideration of the application for renewal/extension of the mining lease enabling the petitioner if eventually the mining lease is decided to be renewed to make good the deficiencies. In the event the petitioner shall be liable to the dead rent for intervening period because

such renewal/extension would relate back her mining lease originally granted.

The writ petition is accordingly allowed with no order as to costs.

(Mohammad Rafiq),J.

Chauhan/